

ASSEMBLY BILL

No. 960

Introduced by Assembly Member La Suer

February 20, 2003

An act to add Article 8.8 (commencing with Section 1039) to Chapter 4 of Division 8 of the Evidence Code, relating to privilege.

LEGISLATIVE COUNSEL'S DIGEST

AB 960, as introduced, La Suer. Public safety officer-peer support counselor privilege.

Existing law creates an evidentiary privilege with respect to specified communications made during certain confidential relationships, including the lawyer-client privilege, the physician-patient privilege, the psychotherapist-patient privilege, the clergyman-penitent privilege, the sexual assault victim-counselor privilege, and the domestic violence victim-counselor privilege.

This bill would establish the public safety officer-peer support privilege regarding information transmitted between a public safety officer, as defined, and his or her peer support counselor in the course of that relationship and in confidence by means that, so far as the public safety officer is aware, discloses the information to no 3rd persons other than those who are present to further the interest of the public safety officer in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the peer support counselor is consulted, and the advice given by the peer support counselor in the course of that relationship. The bill would also set forth various definitions and exceptions from the privilege.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 8.8 (commencing with Section 1039) is added to Chapter 4 of Division 8 of the Evidence Code, to read:

Article 8.8. Public Safety Officer-Peer Support Counselor
Privilege

1039. For the purpose of this article:

(a) “Peer support counselor” means a public safety officer designated by a public safety agency to act as a peer support counselor who has successfully completed a POST-certified peer counseling course.

(b) “Public safety officer” means a corrections officer or a member of his or her staff, a youth correctional officer, a public safety dispatcher, a parole or probation officer, a peace officer, a certified reserve officer, a telecommunications or fire service employee of a public safety agency who attends a program established by the public safety agency to obtain counseling or support services for treatment of issues such as depression, stress, alcohol or drug abuse, marriage counseling or family counseling.

(c) “Public safety agency” means any public agency that employs public safety officers.

(d) “Confidential communication between a peer support counselor and a public safety officer” means information transmitted between a public safety officer and his or her peer support counselor in the course of that relationship and in confidence by means that, so far as the public safety officer is aware, discloses the information to no third person other than those who are present to further the interest of the public safety officer in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the peer support counselor is consulted, and the advice given by the peer support counselor in the course of that relationship.

1039.2. Subject to Section 912 and except as otherwise provided in this article, a public safety officer, whether or not a

1 party, has a privilege to refuse to disclose, and to prevent another
2 from disclosing, a confidential communication between the public
3 safety officer and his or her peer support counselor if the privilege
4 is claimed by one of the following:

5 (a) The holder of the privilege.

6 (b) A person who is authorized to claim the privilege by the
7 holder of the privilege.

8 (c) The person who was the peer support counselor at the time
9 of the confidential communication. However, that person may not
10 claim the privilege if there is no holder of the privilege in existence
11 or if he or she is otherwise instructed by a person authorized to
12 permit disclosure.

13 1039.3. A peer support counselor who received or made a
14 communication subject to the privilege under this article shall
15 claim the privilege whenever he or she is present when the
16 communication is sought to be disclosed and is authorized to claim
17 the privilege under subdivision (c) of Section 1014.

18 1039.4. Any notes, records, or reports arising out of a
19 consultation between a public safety officer and a peer support
20 counselor is not subject to the Public Records Act (Chapter 3.5
21 (commencing with Section 6250) of Division 7 of Title 1 of the
22 Government Code).

23 1039.5. There is no privilege under this article if the services
24 of the peer support counselor were sought or obtained to enable or
25 aid anyone to commit or plan to commit a crime or tort, or to escape
26 detection or apprehension after the commission of a crime or tort.

27 1039.6. There is no privilege under this article as to a
28 communication relevant to an issue of breach, by a peer support
29 counselor or by a public safety officer, of a duty arising out of the
30 public safety officer-peer support counselor relationship.

31 1039.7. There is no privilege under this article if a peer
32 support counselor has reasonable cause to believe that a public
33 safety officer is in such mental or emotional condition as to be
34 dangerous to himself or herself or to the person or property of
35 another, and that disclosure of the communication is necessary to
36 prevent the threatened danger.

37 1039.8. There is no privilege under this article if a peer
38 support counselor obtains information from a public safety officer
39 relating to any admission of criminal conduct.

1 1039.9. There is no privilege under this article as to
2 information that a peer support counselor or a public safety officer
3 is required to report to a public employee or as to information
4 required to be recorded in a public office, if the report or record is
5 open to public inspection.

6 1039.10. Nothing in this article is intended to limit the
7 discovery or introduction into evidence of knowledge or
8 information acquired by a public safety officer, other than
9 information obtained during a counseling session by a peer support
10 counselor, that was obtained during the course of his or her
11 employment and otherwise subject to discovery or introduction in
12 evidence in a criminal or civil proceeding.

